

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**



**FILED**

07/01/22

03:02 PM

R2008020

Order Instituting Rulemaking to Revisit Net  
Energy Metering Tariffs Pursuant to Decision 16-  
01-044, and to Address Other Issues Related to  
Net Energy Metering.

Rulemaking 20-08-020  
(Filed August 27, 2020)

**CENTER FOR BIOLOGICAL DIVERSITY  
REPLY COMMENTS  
ON RULING SETTING ASIDE SUBMISSION OF THE RECORD TO TAKE  
COMMENT ON A LIMITED BASIS**

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July 1, 2022

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The Center for Biological Diversity (“Center”) submits these reply comments to  
Administrative Law Judge Hymes’ May 9, 2022 Ruling Setting Aside Submission of the Record  
to Take Comment on a Limited Basis (“Ruling”).

**I. INTRODUCTION**

As a preliminary matter, the Commission must disregard the Joint Opening Comments of  
Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas and  
Electric Company (“Joint IOUs”) that continue to weaponize equity.<sup>1</sup> The comments are out of  
the scope of the limited purpose of the Ruling and are based on unfounded assumptions.<sup>2</sup>  
However, to the extent that the Commission considers the Joint IOUs’ erroneous comments, the  
Center offers the following reply to further correct the misrepresentation of equity in the record.

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<sup>1</sup> Joint IOU Opening Comments on Ruling at 1-6.

<sup>2</sup> For instance, it is absolute conjecture for the Joint IOUs to question public opinion about NEM when  
this debate has produced two of the largest public rallies (opposing the “solar tax”) in the Commission’s  
history. *See also* Los Angeles Times, Newsletter: Should California Slash Rooftop Solar Incentive? We  
Took a Survey (January 20, 2022) available at <https://www.latimes.com/environment/newsletter/2022-01-20/should-california-slash-rooftop-solar-incentives-we-took-a-survey-boiling-point>

As described in our Opening Comments, the IOUs have failed to implement programs designed to benefit disadvantaged communities (“DACs”), yet now seek to be champions of equity that is, coincidentally, based on a cost-shift theory that maximizes IOU profits and maintains our reliance on the IOU status quo. As the Commission has determined, “by having a set rate of return, IOUs are inherently incentivized to make investments to drive an increase in their rate base and therefore, their profitability.”<sup>3</sup> The NEM program disrupts this traditional rate mechanism that maximizes IOU profits.

It is important to note that the record lacks an adequate examination of a non-participating low-income customer’s energy bill before and after NEM 2.0. Instead, proponents of the cost shift argument rely on estimates derived from either the outdated Avoided Cost Calculator (“ACC”) or inadequate cost-effectiveness tests, the Total Resource Cost and the Ratepayer Impact Measurement tests. At the same time, the Commission is well aware that these tests are outdated and neither considers several costs to society nor other benefits of NEM.<sup>4</sup> During the development of the most recent Environmental and Social Justice (“ESJ”) Action Plan, a key theme emerged to “reconsider traditional cost-effectiveness measures [and] [u]nderstand how investments benefit ESJ communities.”<sup>5</sup> The ESJ Action Plan identifies “[m]ajor challenges with how [the] CPUC looks at cost-effectiveness . . . [and the] need to

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<sup>3</sup> CPUC, Utility Costs and Affordability of the Grid of the Future (“2021 Affordability Report”), available at [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2021/senate-bill-695-report-2021-and-en-banc-whitepaper\\_final\\_04302021.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2021/senate-bill-695-report-2021-and-en-banc-whitepaper_final_04302021.pdf).

<sup>4</sup> See, e.g. CPUC Societal Cost Test Impact Evaluation (January 2022) at 10, available at <https://www.ethree.com/wp-content/uploads/2022/01/CPUC-SCT-Report-FINAL.pdf> (“Energy-related societal costs are especially relevant to California, as the state has some of the most degraded air quality in the United States, particularly in the Los Angeles Basin and in the Central Valley. Air quality improvements are likely to bring significant human health benefits, particularly to disadvantaged communities which are often located near sources of air pollution.”)

<sup>5</sup> ESJ Action Plan at 53, available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>

consider non-energy benefits which can include pollution reduction, quality of services, and person-oriented decisions.<sup>6</sup> The omissions from the cost-effectiveness tests and the undervaluing of certain avoided costs in the ACC include:

- The full range of reduced GHGs from not having to operate or build new peaker plants or other fossil fuel infrastructure that the NEM program has so far displaced;
- The public health benefits of fewer fossil-fuel power plants in DACs. This includes the significant, disproportionate and cumulative costs of criteria, toxic, and water pollution on DAC residents who live, work, or play around fossil fuel extraction and generation infrastructure;
- The reduction in the associated and significant transmission and distribution costs that the NEM program saves all ratepayers<sup>7</sup>;
- The value of NEM to electricity system reliability and resiliency in DACs, including the public health benefits associated with power shutoffs<sup>8</sup>;
- The avoided land use, ecosystem, and wildlife impacts for utility-scale solar, including significant impacts to biodiversity, habitats and species, and the elimination of natural carbon sinks<sup>9</sup>;
- The associated and significant costs of utility-caused wildfire mitigation, such as the costs for undergrounding of transmission lines and associated power shutoffs that the NEM program saves all ratepayers<sup>10</sup>; and
- The value of local economic benefits that NEM creates, including but not limited to local clean energy installation jobs, which are more numerous than utility-scale clean energy jobs.<sup>11</sup>

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<sup>6</sup> *Id.* at 63.

<sup>7</sup> For instance in 2018 alone, the California Independent Systems Operator, citing increased rooftop solar and energy efficiency, canceled 20 transmission projects at a \$2.6 billion savings to all ratepayers.

<sup>8</sup> See, e.g. ESJ Action Plan Goal 4: Increase Climate Resiliency in ESJ Communities.

<sup>9</sup> Nathalie Butt et al., Biodiversity risks from fossil fuel extraction, 342 *Science* 425 (2013); Margaret C. Brittingham et al., Ecological risks of shale oil and gas development to wildlife, aquatic resources and their habitats, 48 *Enviro. Sci. and Tech.* 11,034 (2014); Paul D. Pickell et al., Monitoring forest change in landscapes under-going rapid energy development: challenges and new perspectives, 3 *Land* 617 (2014); Sara Souther et al., Biotic impacts of energy development from shale: research priorities and knowledge gaps, 12 *Frontiers in Ecol. and the Enviro.* 330 (2014); Brady W. Allred et al., Ecosystem services lost to oil and gas in North America, 348 *Science* 401 (2015); Michael B. Harfoot et al., Present and future biodiversity risks from fossil fuel exploitation, 11 *Conserv. Letters* 12,448 (2018).

<sup>10</sup> R.20-08-020, Protect Our Communities Foundation, Rebuttal Testimony of Bill Powers, P.E. (July 16, 2021) at 28-32.

<sup>11</sup> See, e.g., Eric Wesoff and Maria Virginia Olano, *Most US solar jobs are in installation, not manufacturing*, Canary Media, <https://www.canarymedia.com/articles/solar/chart-most-us-solar-jobs-are-in-installation-not-manufacturing> (Utility-scale solar has a much lower level of labor intensity than distributed solar installation).

SB 350 and AB 327 require that the Commission not cherry pick equity issues. As stated in our Opening Comments, SB 350’s dual focus on clean energy deployment and pollution reduction must drive the Commission’s decision-making.<sup>12</sup> But the Joint IOUs, and proponents of the cost-shift argument, continue to lose sight of this dual focus and omit analysis of a host of equity issues in order to fabricate and then zero in on another purported equity issue. The Joint IOUs even acknowledge the continuous growth of the NEM program, but ignore or fail to disclose that this growth *includes* participants in DACs, including low-income customers in the Solar on Multifamily Affordable Housing (“SOMAH”) and the Multifamily Affordable Solar Housing (“MASH”) programs. The record shows that the numbers of such participants are on an upward trajectory, which will continue to accelerate with additional efforts to eliminate barriers to renewables in DACs, such as the proposed Equity Fund.

Rooftop solar installations by low- and moderate-income customers have seen continuous growth since at least 2010.<sup>13</sup> This includes the growth of the program in DACs, in particular in the San Joaquin Valley. More and more DAC tenants have also been able to reap the benefits of NEM through VNEM programs,<sup>14</sup> and those numbers will grow faster if the Commission leverages community solar options as detailed below and advances its work to eliminate other

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<sup>12</sup> Cal. Pub. Util. Code § 400(a) The [C]ommission . . . shall . . . in furtherance of meeting the state’s clean energy and pollution reduction objectives . . . [t]ake into account the use of distributed generation to the extent that it provides economic and environmental benefits in disadvantaged communities”).

<sup>13</sup> See, e.g. R.20-08-020 Prepared Direct Testimony of Brad Heavner and Joshua Plaisted On Behalf of the California Solar and Storage Association (June 18, 2021) Table 3 at 21 (“from 2010 through 2019, solar adoption among California customers with incomes below \$50,000 has increased tenfold, and in 2019, more customers with incomes below \$50,000 adopted solar than customers with incomes above \$250,000.”)

<sup>14</sup> See, e.g. Desert Sun, California, don't give renters a raw deal with new solar net metering rules (June 27, 2022), available at <https://www.desertsun.com/story/opinion/contributors/valley-voice/2022/06/27/california-solar-energy-new-net-metering-rules-could-hurt-renters/7719131001/> (“[VNEM] allow[s] property owners to craft agreements with tenants to share the credits for energy sold back to the grid. Any abrupt changes to NEM would prove devastating to this.”)

barriers to solar in DACs. Pursuant to AB 327, the Commission must at least maintain this continuous growth. In addition to failing to fully account for the benefits and avoided costs to DAC residents, the Joint IOUs' premise that the current program is unsustainable is simply unfounded. The Commission should ask two questions:

(1) Are the benefits that the IOUs omit important?

(2) If so, should an outdated tool that omits all of these benefits be relied on as representing today's reality, jeopardizing the continuous growth of a program that is helping California achieve its climate and equity goals?

Overall, this cost shift debate is simply a distraction from the real question that the SB 350 DAC Advisory Group is charged with answering: how to eliminate the barriers to greater deployment of renewables, especially in DACs.<sup>15</sup> This is at the core of the dual focus of the State's Clean Energy and Pollution Reduction Act. Certainly, the cost shift could only theoretically become a problem in the future if we fail to switch enough DAC residents to clean energy resources. The current NEM program has put us on a trajectory to avoid that problem, and we need more investments in DACs to move us even closer, such as the proposed Equity Fund which would specifically target distributed energy resource deployment in DACs. We should also be fixing the State's failed Community Solar Program, expanding and streamlining the SOMAH Program, driving down the market price of batteries, and more. We need a stronger NEM program, especially for DAC residents, so we should eliminate the penalty on CARE

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<sup>15</sup> California Environmental Justice Alliance ("CEJA") Public Comment Letter on CPUC's Net Energy Metering 3.0. Rulemaking (R.) 20-08-020 Addressing Community Solar (June 10, 2022). Certainly, CEJA notes the root cause that "solar *access* in California is deeply inequitable," and "as a result of centuries of systemic racism, redlining, resource extraction, and institutional neglect, EJ communities face *critical barriers to accessing* solar." CEJA's comment letter echoes this comment's calls to improve the NEM program for DAC residents.

customers with solar,<sup>16</sup> and ensure that all multifamily homes statewide benefit from VNEM without restriction. Weakening the NEM program simply imposes additional barriers to the achievement of our climate and equity goals; eliminating barriers is the real issue at stake.

Finally, the Center corrects the Joint IOUs' misrepresentation of the findings of the 2022 Senate Bill ("SB") 695 Report to the Governor and Legislature on Actions to Limit Utility Cost and Rate Increases. Just as the Joint IOUs cherry pick equity issues, the Joint IOUs also cherry pick pieces of the Commission's report on affordability to support their unfounded claim. In fact, both SB 695 affordability reports (2021 and 2022) detail the reasons for high electricity bills, and it is not the NEM program.

[Since 2013] [t]he growth in rates can be largely attributed to *increases in capital additions driven by rising investments in transmission by PG&E and distribution by SCE and SDG&E* . . . Furthermore, *higher than national average returns on equity (ROE) are a more modest but not insignificant factor* that has amplified the three IOUs' revenue growth in recent years.<sup>17</sup>

Then, in 2022, the Commission confirmed these findings and determined that wildfire mitigation also presents a significant cause of bill increases:

Over the next several years it is anticipated that there will be higher than historic annual average growth rates for transmission and distribution infrastructure . . . most notably wildfire mitigation costs. In 2021, *significant wildfire-related operating expenses, including wildfire liability insurance coverage, began to appear in rates and all indicators point to continued significant rate growth in the near term resulting from these ongoing wildfire mitigation efforts*.<sup>18</sup>

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<sup>16</sup> SB 350 Low Income Barriers Study Part A (Barriers Study) at 54 *available at* [https://assets.ctfassets.net/ntcn17sslow9/3SqKkJoNIvts2nYVPAOmGH/fe590149c3e39e51593231dc60e0eeff/TN214830\\_20161215T184655\\_SB\\_350\\_LowIncome\\_Barriers\\_Study\\_Part\\_A\\_Commission\\_Final\\_Report.pdf](https://assets.ctfassets.net/ntcn17sslow9/3SqKkJoNIvts2nYVPAOmGH/fe590149c3e39e51593231dc60e0eeff/TN214830_20161215T184655_SB_350_LowIncome_Barriers_Study_Part_A_Commission_Final_Report.pdf) ("A particular barrier to low-income homeowners being able to afford onsite solar is that NEM credits are based on a customer's retail electricity rate, so CARE customers are credited for NEM at a lower rate than non-CARE customers. Consequently, payback periods for CARE customers with net metered solar can be considerably longer than for general customers.")

<sup>17</sup> 2021 Affordability Report at 7 (emphasis added).

<sup>18</sup> 2022 Affordability Report at 9 (emphasis added) *available at* <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2022/2022-sb-695-report.pdf>.

At base, affordability impacts and the growth in rates is simply not due to the NEM program. Proponents of the cost shift argument may well argue that it is these same transmission, distribution, and wildfire costs that are passed on to non-participating customers, but that misses the point. As indicated above, the avoided costs of transmission that the NEM program displaces are significant. In addition, avoided transmission projects also implicates avoided wildfire mitigation costs for that new transmission.<sup>19</sup>

In regards to rising bills due to wildfire mitigation costs, those costs should be absorbed by the utilities and shareholders themselves, because the fossil-fuel electricity system that they created and chose to perpetuate is causing these very climate-induced harms.<sup>20</sup> Further, utilities' negligence in fortifying the grid to withstand these wildfire attacks and rendering the grid brittle fall squarely on utilities and their poor planning processes. Thus, utilities are now seeking higher rates of return to cover the recovery costs of the climate emergency that they contributed to, with California utilities obtaining higher rates of return than their counterparts in other states.<sup>21</sup> In

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<sup>19</sup> R.20-08-020, Protect Our Communities Foundation, Rebuttal Testimony of Bill Powers, P.E. (July 16, 2021) at 28-32. Targeted deployment of behind-the-meter solar and storage in high fire danger areas, for instance, also presents significant societal and ratepayer benefits of avoided wildfire-related grid hardening projects.

<sup>20</sup> It is well documented that utilities—including California's utilities—have known about the coming climate emergency for decades, while continuing to invest millions of dollars in fossil fuel infrastructure. *See, e.g.*, David Anderson et al., Energy and Policy Institute, Utilities Knew: Documenting Electric Utilities' Early Knowledge and Ongoing Deception of Climate Change from 1968-2017 (2017) *available at* <https://www.energyandpolicy.org/utilities-knew-about-climate-change/>.

<sup>21</sup> *See, e.g.*, Sammy Roth, PG&E and Southern California Edison can't raise profit margins, regulators decide, L.A. TIMES, (Dec. 19, 2019), <https://www.latimes.com/environment/story/2019-12-19/pg-e-southern-california-edison-sdge-higher-profits-rejected>; Brad Plumer & Ivan Penn, Climate Crisis Catches Power Companies Unprepared, N.Y. TIMES, (July 29, 2021) <https://tinyurl.com/hdha5xs4>. Accordingly, the CPUC should follow utility commissions in other states that are holding utilities accountable for the increased costs associated with responding to the climate emergency. For example, the Connecticut Public Utilities Regulatory Authority ("CPURA") reduced a Connecticut utility's return on equity as a result of that utility's failed response to Tropical Storm Isaias. The CPURA also indicated that it would look skeptically at any future attempt by the utility to recoup \$230 million in storm recovery costs from ratepayers. *See* Patrick Skahill, Eversource 'Failed Us': PURA Imposes Strict Penalties For

any event, NEM is in fact a solution to mounting bills from wildfire mitigation, and again, not the cause of high bills.

While the 2022 report does estimate some increase in bills due to NEM, those estimates still omit the same benefits and underestimate avoided costs as detailed above.<sup>22</sup> Furthermore, the 2022 report recognizes that the estimates of a cost shift are preliminary, and in that specific regard recommends: “*a deeper examination is required of the long-term savings and benefits to the system of a more efficient grid with greater penetration of BTM resources.*”<sup>23</sup>

Because the Commission is aware of the omissions and shortcomings of the ACC, and the need for this “deeper examination,” it would be arbitrary and capricious to rely on the outdated tool to fulfill the Commission’s mandates under AB 327, especially to the detriment of our clean energy and climate goals. This is especially true after the Supreme Court’s disastrous decision this week, limiting the authority of the U.S. Environmental Protection Agency to address the devastating impacts of power plant pollution.<sup>24</sup> To be clear, nothing binds the Commission to employing the ACC as-is, or otherwise prevents the Commission from examining the full range of costs and benefits of the NEM program pursuant to AB 327.

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Tropical Storm Isaias Response, CONN. PUBLIC RADIO (Apr. 28, 2021), *available at* <https://www.ctpublic.org/environment/2021-04-28/eversource-failed-us-pura-imposes-strict-penalties-for-tropical-storm-isaias-response>; Investigation Into Electric Distribution Companies’ Preparation for and Response to Tropical Storm Isaias, No. 20-08-03 (Conn. Pub. Util. Reg. Auth., Apr. 28, 2021).

<sup>22</sup> For instance, as Cal Advocates concedes, the ACC only includes the deferred value of unspecified transmission projects R.20-08-020 Cal Advocates Opening Brief at 11. Similarly, the Commission is also aware of the significant avoided transmission costs from the cancellation of transmission projects due to the NEM program, but the ACC also does not consider those costs. D.20-03-005 at 1.

<sup>23</sup> 2022 Affordability Report at 16 (emphasis added).

<sup>24</sup> *West Virginia v. EPA*, No. 20-1530 (June 30, 2022).

## **II. REPLY TO RESPONSES TO RULING QUESTIONS**

### **B. Non-Bypassable Charges (“NBCs”) on Gross Consumption**

The Center concurs that the Commission should reject the NBCs proposal because it exceeds the Commission’s jurisdiction.<sup>25</sup> This is consistent with statutory exemptions from the application of certain charges based on changes in consumption from the grid:

uneconomic costs . . . shall be applied to each customer based on the amount of electricity purchased by the customer from an electrical corporation or alternate supplier of electricity, subject to changes in usage occurring in the normal course of business.<sup>26</sup>

### **C. Community Distributed Energy Resources**

The SB 350 Barriers Study found that “NEM and virtual net metering have been *instrumental in the success* of SASH and MASH.”<sup>27</sup> The Commission should replicate the same coordination of programs to improve the failed community solar program. The Center therefore opposes the Joint IOUs’ suggestion to limit the progress of clean energy deployment in DACs by silo’ing the NEM and community solar programs.

“In order to best reach ESJ communities and maximize impact, programs and policies should align both eligibility criteria and outreach efforts.”<sup>28</sup> This recommendation mirrors the Barriers Study’s recommendation to coordinate programs: “[i]nnovative methods will be needed to develop a viable and durable low-income solar market . . . successful [examples involve] leveraging multiple programs to target disadvantaged communities.”<sup>29</sup>

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<sup>25</sup> SEIA and Vote Solar Opening Comments on Ruling at 14-16; CalSSA Opening Comments on Ruling at 11-13.

<sup>26</sup> Cal. Pub. Util. Code § 371(a).

<sup>27</sup> *Supra*, fn. 16 (emphasis added).

<sup>28</sup> *Supra*, fn. 5 (ESJ Action Plan).

<sup>29</sup> Barriers Study at 54.

Coordination of programs is particularly important for the ECR and CSGT programs. To date, these programs have seen *zero* projects deployed.<sup>30</sup> It is noteworthy that affordability is a primary reason the community solar programs have not proven successful.<sup>31</sup> Just as with the SASH and MASH programs, the Commission should tackle this barrier head on and leverage the affordability benefits of the NEM program to the benefit of DAC residents that cannot afford their own rooftop solar. The Commission should reject the Joint IOUs' suggestion to the contrary, and instead adhere to its policies and overall mission to serve the State's DAC residents and further achievement of our clean energy and climate targets.

Dated: July 1, 2022

Respectfully submitted,

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<sup>30</sup> See CSGT Program Quarterly Reports, available at <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/solar-in-disadvantaged-communities/the-community-solar-green-tariff-csgt-program>; Center Opening Comments on Ruling detailing zero projects for the ECR Environmental Justice Reservation.

<sup>31</sup> See, e.g. Barriers Study at 54 (“solar fees” such as the Power Charge Indifference Adjustment (PCIA), may make joining a community solar program . . . cost-prohibitive especially for low-income customers).